

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:320. Hearings.

6 RELATES TO: KRS 224.10-410 -224.10-470, 224.60

7 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-130(1)(f)~~[224.10-100(30),~~
8 ~~224.60-130(2)(f)]~~

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28)~~[224.10-~~
10 ~~100(30)]~~ authorizes the cabinet~~[Environmental and Public Protection Cabinet]~~ to promulgate
11 administrative regulations not inconsistent with the provisions of law administered by the
12 cabinet. KRS 224.60-130(1)(f) requires complaints brought regarding the payment of claims
13 from the cabinet, in accordance with KRS 224.10-410 to 224.10-470 to be heard. This
14 administrative regulation establishes hearing procedures to be followed in the hearing of those
15 complaints.

16 Section 1. Postdetermination Actions. A person aggrieved by a final, adverse
17 determination regarding reimbursement eligibility or a claim for payment may request:

18 (1) Reconsideration, under Section 2 of this administrative regulation; or

19 (2) A formal hearing, pursuant to KRS 224.10-420 and 224.10-440~~[224.10]~~, under
20 Section 3 of this administrative regulation.

21 Section 2. Reconsideration. (1) A request for reconsideration shall be:

1 (a) 1. Documented on Reconsideration Request Form, DEP 0063; and

2 2. The applicant shall keep a copy of the form for their own records~~[In writing]~~; and

3 (b) Received by the cabinet within thirty (30) days from the date the person has notice, or
4 could reasonably have had notice, of the adverse determination.

5 (2) The request shall include:

6 (a) A statement of the grounds for reconsideration;

7 (b) Supporting documents; and

8 (c) Other evidence not previously considered.

9 (3) The cabinet shall reevaluate the eligibility determination or payment claim previously
10 denied, if the evidence accompanying the request warrants reconsideration by demonstrating
11 clear error or clarifying information through submittal of additional documentation.

12 (4) The cabinet shall not reconsider a matter more than once.

13 Section 3. Formal Administrative Hearings. A person aggrieved by a final, adverse
14 determination regarding reimbursement eligibility or a claim for payment may petition the
15 cabinet for a formal administrative hearing in accordance with KRS 224.10-420 and 224.10-440.
16 These administrative hearings shall be heard in accordance with 400 KAR Chapter 1 and 401
17 KAR 100:010.

18 Section 4. Extensions. (1) The owner or operator of a UST system may request an
19 extension to a deadline established by this administrative regulation or established by the cabinet
20 in writing pursuant to this administrative regulation.

21 (2) The extension request shall be submitted in writing and received by the Underground
22 Storage Tank Branch of the Division of Waste Management prior to the deadline.

1 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
2 not have a detrimental impact on human health or the environment.

3 Section 5. Incorporation by Reference. (1) "Reconsideration Request Form", DEP 0063
4 (April 2011), is incorporated by reference.

5 (2)(a) This material may be inspected, copied, or obtained, subject to copyright law, at
6 the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky
7 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

8 (b) This material is also available on the Division of Waste Management's Web site at
9 <http://waste.ky.gov/ust>.

401 KAR 42:320 approved for filing.

4/14/11

Date

L K Peters

Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
Division of Waste Management
200 Fair Oaks, Second Floor
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Cassandra.Jobes@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for hearings and reconsiderations.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the procedures for hearings and reconsiderations.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by establishing the procedures for hearings and reconsiderations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statute by establishing the procedures for hearings and reconsiderations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment changes the existing administrative regulation by incorporating a standard form to be used for reconsiderations and adding extension language.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary because it adds extension language and it creates a standard form for reconsideration requests.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statute by clarifying that reconsideration requests should be done on a standardized form.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute because the standardized form will be used for reconsideration requests.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This amendment will affect PSTEAF applicants who request reconsiderations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

PSTEAF applicants will have to fill out the standardized form for reconsideration requests.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There should be no additional costs associated with using the standardized form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

By using the standardized form, PSTEAF applicants will have their reconsideration requests reconsidered.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost to the agency.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: PSTEAF

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fee is necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This amendment does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

No. The requirements for hearings and reconsiderations are the same for all PSTEAF applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:320

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-130(1)(f)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year?

This amendment will not cost the program additional money to implement.

(d) How much will it cost to administer this program for subsequent years?

This amendment will not cost the program additional money to implement.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Reconsideration Request Form", DEP 0063, (April 2011). This document is to be submitted by PSTEAF applicants that wish to have a previous claim reconsidered.

This document consists of 1 page.